

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO.510 OF 2004

IN

WRIT PETITION NO.9026 OF 2003

Shankar Abaji Bhujbal & Ors.

..Petitioners.

Vs.

State of Maharashtra & Ors.

..Respondents.

...

Ms. Sumidha Dongre for the Petitioners.

Mr. A.P. Vanarase, AGP for the State.

....

CORAM : [DR.D.Y.CHANDRACHUD](#), J.

12<sup>th</sup> April, 2006.

P.C.:

1. The main Writ Petition (Writ Petition 9026 of 2003) that challenges the order of the Additional Commissioner declining to withdraw from acquisition under Section 48 of the Land Acquisition Act, 1894 was dismissed on 27<sup>th</sup> January, 2004. The ground which weighed with the Court was that the order of the Additional Commissioner was passed on 23<sup>rd</sup> July, 2001 and there was an unexplained delay in the institution of the petition which was filed only on 1<sup>st</sup> December, 2003. A review petition has been filed in which it has been stated that in the writ petition sufficient grounds

were urged viz. Grounds, 2, 3 and 4 to show that the decision of the Fourth Respondent has been taken without furnishing to the Petitioners an opportunity of being heard. Grounds 2, 3 and 4 of the writ petition are as follows :

“2. The Respondent No.4 ought to have issued notice to the petitioners or their then advocate for hearing of the matter before passing the impugned order dated 23-07-2001 or before deciding the matter on merits and before closing the matter on merits for order.

3. The Respondent No.4 ought to have considered that even the Roznama does not show the date of decision of the Application / Appeal No.250 of 2000 i.e. date of decision 23-07-2001 and the last date reflected on the Roznama is 22-06-2001.

4. The Respondent No.4 ought to have considered that the signatures of the then Advocate for Petitioners is not reflected on the Roznama for the days 13-06-2001 and 22-06-2001, this fact clearly shows that no information, intimation or notice was given to the petitioner or their then advocate for fixing the matter for hearing and before closing the matter for orders on merits. Therefore the impugned Judgment & Order was passed without giving opportunity of being heard to the petitioners. Therefore the impugned judgment & order is liable to be set aside & the matter is required to remand back to the Respondent No.4 for fresh disposal on merits after giving opportunity of being heard to the petitioners.”

2. When this Review petition came up, the learned AGP was directed to take instructions as to whether possession has

already been taken from the Petitioners of Gat No.42/2 admeasuring 1 Hectare 53 Ares. An affidavit has been filed of the Special Land Acquisition Officer dated 6<sup>th</sup> September, 2005 in which it has been stated that possession has not yet been taken.

3. Having heard counsel appearing for the Review Petitioners and the learned AGP, I am of the view that for the grounds set out therein the Review Petition deserves to be allowed and that it should accordingly be allowed. The order dated 27<sup>th</sup> January 2004 is accordingly recalled and the petition is restored to file.